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JOSEPH F. SARNIOL, JR.  
CLERK

No. 89-1279

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1989

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**PACIFIC MUTUAL LIFE INSURANCE COMPANY,**  
*Petitioner,*

vs.

**CLEOPATRA HASLIP, CYNTHIA CRAIG,  
ALMA M. CALHOUN and EDDIE HALGROVE,**  
*Respondents.*

---

ON PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF ALABAMA

---

**PETITIONER'S REPLY BRIEF**

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## **PETITIONER'S REPLY BRIEF**

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### **REPLY STATEMENT OF REASONS FOR GRANTING PACIFIC MUTUAL'S PETITION**

#### **A. THIS CASE PRESENTS IMPORTANT DUE PROCESS ISSUES REGARDING PUNITIVE DAMAGES IN AN APPROPRIATE FACTUAL SETTING.**

Respondents' contention that this case does not present its Due Process issues with sufficient clarity is without substance.

##### **1. The Trial Evidence Cited By Respondents As Showing Pacific Mutual Was Implicated In Mr. Ruffin's Fraud Does Not Support Their Claim.**

Respondents claim that Pacific Mutual is not an innocent principal because it had direct notice of wrongdoing by Mr. Ruffin. Citing the trial testimony of Lionel Williams, Bonnie Spencer and Deborah Ault, Respondents' Brief In Opposition states at page 6:

*"Furthermore, the evidence showed that Pacific Mutual had long been aware of similar frauds perpetrated by Mr. Ruffin while acting as a Pacific Mutual agent, and did nothing to prevent or remedy them."*

This statement is false, and misstates the evidence.

**a. The Trial Court Instructed The Jury That Lionel Williams' Testimony Did Not Show Notice To Pacific Mutual Of Mr. Ruffin's Conduct.**

Mr. Williams testified that when a doctor refused to honor the insurance card of one of his employees, Mr. Williams called Pacific Mutual to see if Mr. Ruffin was an agent, and if Mr. Williams had insurance. In fact, he did. His complaint was that the employee's claim was declined, for unstated reasons [Reporter's Trial Transcript,<sup>1</sup> ("R.T.") pp. 372-376; 383; 387]. At the conclusion of direct examination, the trial court, on request of counsel, instructed the jury as follows [R.T. p. 386]:

"THE COURT: Notice to the company in California, this testimony is not for that purpose, because it comes subsequent to the events in this case. But you can receive this to determine any intent of Mr. Ruffin and his course of conduct. Go ahead."

**b. The Trial Judge Instructed The Jury That The Testimony Of Bonnie Spencer, As Explained By The Testimony Of Frank Johnson, Did Not Show Notice To Pacific Mutual Of Mr. Ruffin's Activities.**

Bonnie Spencer testified that she had purchased life insurance through Mr. Ruffin, that she paid her premiums to him in cash, received receipts, and later gave them to Frank Johnson; Mr. Johnson contacted Pacific Mutual and Pacific Mutual refunded all of her money [R.T. pp. 547-548].

<sup>1</sup> The cited portions of the Reporter's Transcript are set forth in Appendix A hereto.

Mr. Johnson testified that he wrote to Pacific Mutual on Mrs. Spencer's behalf in October, 1982, which was after the events in this case. Shortly thereafter, Pacific Mutual sent a check for the money he requested for Mrs. Spencer [R.T. pp. 548-556]. In the course of this testimony, the trial court gave the jury a limiting instruction as follows [R.T. p. 554]:

"THE COURT: October of '82, which is subsequent to the events in this case. This is not admitted for notice to Pacific Mutual of these transactions, but this piece of evidence goes to whatever the jury wishes to receive the evidence as it relates to the intentions of, plan or design of Mr. Lemmie Ruffin."

**c. The Testimony Of Deborah Ault Was That She Received Complaints As To Mr. Ruffin For A Period Of Time, And Gave Them To Mr. Lupia, But Did Not Know Whether The Complaints Involved Pacific Mutual.**

Respondents have cited Ms. Ault's testimony as if it showed direct notice to Pacific Mutual in California of complaints regarding Mr. Ruffin.

However, her testimony in fact was that she received two or three complaints a week from people complaining that they had purchased insurance through Mr. Ruffin, made claims and found they had no insurance, for a period of eighteen months, and that she gave these complaints to Mr. Lupia [R.T. pp. 490-492; 498-499; 502].<sup>2</sup>

<sup>2</sup> The trial court, somewhat incredulous, asked [R.T. p. 492]:

"THE COURT: Two or three a week?

"THE WITNESS: Yes, sir.

"THE COURT: Five hundred of them?

"THE WITNESS: Yes, sir."

(continued)

On cross-examination, Ms. Ault admitted that (i) she did not know whether the persons calling were claiming to be insured by Pacific Mutual, Union Fidelity or John Alden [R.T. p. 513], (ii) did not look them up in the office files to see if they were insured [R.T. p. 514], (iii) to her knowledge none of these callers ever wrote a letter to the agency office [R.T. pp. 514-515]; (iv) she had no knowledge of any of the callers ever suing Mr. Ruffin [R.T. p. 515]; and (v) although she opened the office mail, she never saw any correspondence regarding complaints by any callers to the Alabama Department of Insurance [R.T. pp. 515-516].

At most, Ms. Ault's testimony, if believed, would show notice to Mr. Lupia, which under the circumstances of this case, was not notice to Pacific Mutual. This will be discussed more fully below.

Respondents' claim that Pacific Mutual was implicated in Mr. Ruffin's fraud is without basis. The trial testimony cited shows no notice to Pacific Mutual prior to the events in this case.

**d. Notice To Mr. Lupia Was Not Notice to Pacific Mutual. Mr. Lupia Was Acting On Behalf Of Union Fidelity.**

The asserted involvement of Mr. Lupia changes no issues presented by Pacific Mutual. Mr. Lupia was not Pacific Mutual. No testimony showed that Mr. Lupia was ever on notice of any problem with premium payments being pocketed by Mr. Ruffin on any Pacific Mutual policy. Ms. Ault was unable to identify whether any of the alleged callers complaining of Mr. Ruffin were Pacific Mutual policyholders. To the extent Mr. Lupia sent a notice to Mr.

(ftn. continued)

Ms. Ault changed her testimony to state that the complaints only came in for eight or nine months [R.T. p. 502].

Passman, of Union Fidelity, requesting that the Union Fidelity premium notices on Respondents' policies be sent to Mr. Ruffin at the address of the Pacific Mutual office, he was merely one more agent acting on behalf of Union Fidelity, rather than Pacific Mutual, and acting contrary to (i) Pacific Mutual's interests, and (ii) Pacific Mutual's express instructions set forth in his contract. Mr. Passman's agreement to the request was on behalf of Union Fidelity, not Pacific Mutual.

At most, Mr. Lupia's asserted involvement in Mr. Ruffin's scheme means that Pacific Mutual was punished for the wrongdoing of two of its agents, rather than one.

**2. Although A General Verdict Was Rendered, The Alabama Courts, And Counsel At All Levels Until Now, Have Considered And Treated The Verdict As Containing A Punitive Damages Award In Excess Of \$1,000,000.**

The punitive damages issues in this case were presented to the Alabama courts by counsel for both sides as involving an award of over \$1,000,000. [See Appendix B (a portion of Appellees' Brief below; Appendix C, referred to below.)]

In its Appellees' Brief In Opposition To Pacific Mutual's Application For Rehearing [Appendix C (excerpt)], signed by Charles E. Sharp, John F. Whitaker and Robert H. Sprain, Jr., Respondents stated to the Alabama Supreme Court, at page 8:

"In view of the grossly fraudulent conduct committed by the defendants in this case, the imposition of \$1,040,000 in punitive damages was fitting; indeed, it will serve as punishment and the useful function of deterring others similarly situated from engaging in egregious conduct."



Respondents' attempt to avoid review of the important issues raised herein by now claiming that no ascertainable punitive damages award exists in this case is not supportable.<sup>3</sup>

**B. THE ALABAMA TORT REFORM ACT DOES NOT RENDER THE ISSUES RAISED BY THIS CASE UNWORTHY OF REVIEW.**

Respondents contend that the 1987 enactment of new tort reform legislation in Alabama removes any need for review by this Court.

The legislation enacted on June 11, 1987 after the cause of action arose in this case provides in part for (1) a \$250,000 "cap" on punitive damages awards in certain types of cases; (2) a higher standard of proof for punitive damages awards; (3) the removal of the presumption of correctness afforded to punitive damages awards; and (4) requests for post-trial evidentiary hearing on damages. The "guidelines" provided by such legislation does little, however, to set adequate limits on jury discretion. Moreover, it is apparent that the Alabama courts themselves still need guidance on the issue.

In *Central Alabama Electric Cooperative v. Tapley*, 546 So.2d 371 (Ala. 1989), the Supreme Court of Alabama, expressed in dicta, its reluctance to place strict limits on jury discretion stating at page 337:

<sup>3</sup> Further, in final argument, Respondents' counsel asked, for Mrs. Haslip, \$3,923.94 in actual damages, aggregated into a request for \$200,000 in compensatory damages, and asked for \$3,000,000 in punitive damages [R.T. pp. 810; 812; 814]. Therefore, if the jury awarded the full amount requested in compensatory damages, the punitive damages award would not be less than \$800,000 as to Mrs. Haslip alone.

"We can envision no set of carved-in-granite standards that would guide every jury in every conceivable case."

[Cf. *Industrial Chemical & Fiberglass Corp. v. Chandler*, 547 So.2d 812, 837 n. 2 (Ala. 1989) (limiting jury discretion as to punitive damages would violate the Alabama constitutional right to trial by jury); *Tramck v. Michaels of Oregon Co.*, No. 88-C-413-N (M.D. Ala.) (constitutionality of the cap on punitive damages certified to the Alabama Supreme Court).

Moreover, review of the new legislation reveals that the legislation itself is flawed and fails adequately to protect the Due Process rights of defendants such as Pacific Mutual. For example, although the legislation places a \$250,000 cap in certain types of cases, as evidenced by *Tapley* and *Chandler*, the Alabama courts appear reluctant in practice to follow the legislature's mandates. Further, although the cap theoretically appears to be an improvement, the cap under Alabama law cannot act to guide a jury because the jury is prohibited from even being told of applicable caps in rendering their decision. [Alabama Code § 6-11-22 (Supp. 1989).]

**C. THE LEGAL STANDARDS IN THIS CASE RAISE THE ISSUES REGARDING WHICH THIS COURT HAS EXPRESSED CONCERN.**

Respondents claim that the jury in this case was not given unbridled discretion to award punitive damages in any amount, because of Alabama post-trial review procedures. This claim is not well-taken.

1. **The Jury Instruction Given In This Case On Punitive Damages Was Virtually Identical To That In *Browning-Ferris Industries of Vermont v. Kelco Disposal, Inc.***

The jury was sent to the jury room in this case with no more guidance than to do as it thought best. That is precisely the basis, of the national Due Process issue regarding punitive damages.

**2. Post-Trial Review Does Not Cure The Due Process Invalidity Of Inadequate Jury Guidance On The Amount Of Punitive Damages Awards.**

No *de novo* hearing was conducted in this case. The trial court heard post-trial motions in the context of a presumption of the correctness of the verdict. Alabama gives the same extraordinary deference to jury awards of punitive damages as do the other states. The Alabama post-trial procedures do not differ in substance from post-trial review on motions for remittitur or new trial in other states.

This case clearly presents the Due Process issues, as well as the issue of the effect of judicial review as curing or not curing the Due Process impermissibility of unlimited jury discretion to award punitive damages.

**3. *Respondeat Superior* Liability For Punitive Damages Is The Rule In Twenty States.**

Alabama is not unique in imposing liability for punitive damages on a *respondeat superior* basis. This is the rule in twenty states [See Appendix D]. Further, under the Alabama Tort Reform Act, punitive damages may still be awarded on this basis if the jury believes that the principal "benefited from" the agents unauthorized, unratified acts.

**4. Prior Decisions Of This Court Do Not Foreclose The *Respondeat Superior* Issue.**

Respondents contend that the Due Process permissibility of imposing punitive damages on a vicarious liability basis is established by *Louis Pizitz Dry Goods Co. v. Yeldell*, 274 U.S. (1927) and *American Society of Mechanical Engineers v. Hydrolevel Corp.*, 456 U.S. 556 (1982).

Neither case supports Respondents' position.

*Pizitz* involved a challenge to Alabama's wrongful death statute, under which the only damages awardable are labelled "punitive damages." This statute, and the Alabama case law which has developed under it, is truly a *sui generis* area of law. Alabama so treats it, and in *Pizitz*, this Court agreed with the Alabama court that the Alabama wrongful death statute is remedial, not penal, and on that basis upheld the statute.

*American Society of Mechanical Engineers v. Hydrolevel Corp.*, 456 U.S. 556 (1982), is discussed in Pacific Mutual's Petition. It should be noted that four Justices dissented in *Hydrolevel Corp.* on the ground that apparent authority is not a permissible basis for punitive damages, even in antitrust cases.

Neither *Pizitz* nor *Hydrolevel Corp.*, foreclose the issue of whether or not a principal may, consistently with Due Process, be held liable for punitive damages on a vicarious liability basis.

**D. THE FACT THAT LEGISLATURES IN NINE STATES HAVE ENACTED TORT REFORM LEGISLATION AFFECTING PUNITIVE DAMAGES TO SOME DEGREE DOES NOT RENDER THE DUE PROCESS AND EQUAL PROTECTION ISSUES UNWORTHY OF REVIEW.**

Some states have affected punitive damages awards to a greater or lesser extent by tort reform legislation. Much if

not most of this legislation has little effect on the issues presented here. In California, for example, Senate Bill 241, enacted in 1987, did nothing to require greater guidance to juries on the amount of punitive damages awards [Calif. Civ. Code §§ 3294, 3295].

**E. THE FREQUENCY OF REMITTITUR OF  
PUNITIVE DAMAGES AWARDS BY TRIAL  
AND APPELLATE COURTS SHOWS THAT  
THE JURY PROCESS IS FLAWED.**

Respondents contend that selected studies show that current punitive damages doctrine is functioning appropriately. Appendix E hereto (Appendix 7 to Pacific Mutual's Appellant's Brief, below) shows both the escalation in frequency and amount of punitive damage awards, and the frequency of remittiturs, after which the awards are still staggering.

**F. THE EQUAL PROTECTION ISSUES RAISED  
BY PACIFIC MUTUAL SHOULD BE RE-  
VIEWED BY THIS COURT.**

Appendix F hereto sets forth the six Alabama statutes which limit punitive damages for specified categories of defendants, and comparable California statutes.

Respectfully submitted,

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**APPENDIX A**



**EXCERPT PAGES FROM  
REPORTER'S TRANSCRIPT**

[Page 372 LIONEL WILLIAMS]

THE COURT: All right. The money was given, you gave the money to Mr. Ruffin?

THE WITNESS: Yes, sir.

THE COURT: You found out you didn't have any insurance; is that basically it?

THE WITNESS: Yes, sir.

THE COURT: That's basically what we've got here. Who were the checks made out to? Oh, you gave him cash.

THE WITNESS: Yes, sir.

THE COURT: What was it for, life insurance or what?

THE WITNESS: Health insurance.

THE COURT: With?

THE WITNESS: Pacific Mutual.

THE COURT: When did you find out you didn't have this insurance?

THE WITNESS: When an employee of mine went to the doctor and filed a claim.

THE COURT: Oh, it was a group policy?

THE WITNESS: Yes.

THE COURT: Your employee?

THE WITNESS: Yes.

[Page 373 LIONEL WILLIAMS]

THE COURT: Not you personally?

THE WITNESS: No.

THE COURT: Basically what we have here, I'll let you ask him some questions too, if you want to, Mr. Hart or Mr. Blan. Like I say, no full scale discovery but —



MR. HART: You say you contacted somebody about this?

THE WITNESS: Yes.

MR. HART: Who did you contact?

THE WITNESS: I contacted the office over here on Beacon Parkway, I guess is where it was, and after I talked to them and I didn't get any results, so I called California where the home office was where it was listed on the paper.

MR. HART: Who did you talk to there?

THE WITNESS: Several people whose names I don't remember but they referred me back to the office here, and I called back out to California again and as a matter of fact I think I called three times.

MR. HART: That's okay. Then what happened?

[Page 374 LIONEL WILLIAMS]

THE WITNESS: Nothing happened.

MR. HART: Was anything done about your bills not being paid or covered to you or your employees?

THE WITNESS: Nothing was done by the company.

MR. HART: I'm talking about by you and your employees, did y'all do anything else?

THE WITNESS: Well, we called back over to the office. We had to make arrangements with the doctor.

MR. HART: Was any lawsuit filed or anything like that?

THE WITNESS: No.

MR. HART: Did you make any complaints with the state insurance department?

MR. WHITAKER: He's fishing now, Your Honor. As you said, this is not a discovery.

MR. HART: What were you told about Pacific Mutual either here or in California?

MR. SHARP: Judge, I object to that. He's going into cross examination now.

THE COURT: Of course, I'm going to --

[Page 375 LIONEL WILLIAMS]

I'll let him in a little bit, we're not going to have a full scale deposition here. Go ahead.

MR. HART: That's the problem. What were you told here and in California?

THE WITNESS: That in fact he was working for Pacific Mutual and he was connected. My concern was whether or not he in fact was connected, and I wanted to know whether or not we had a policy and if we had policy numbers and who could put leverage on it in order to get some action.

MR. HART: Did they tell you the policies were cancelled?

THE WITNESS: No, as a matter of fact, they had the policy numbers.

THE COURT: Well, were the policies cancelled?

THE WITNESS: No, they weren't.

THE COURT: Ever issued?

THE WITNESS: Yes, they were issued, they were issued.

THE COURT: Well, did you have insurance?

THE WITNESS: I assume that we had insurance.

[Page 376 LIONEL WILLIAMS]

THE COURT: Well, what happened, was the bill paid?

THE WITNESS: The bill was not paid.

THE COURT: Well, there was no cancellation of the insurance?

THE WITNESS: Not to my knowledge.

MR. WHITAKER: Did you ever receive a notice of cancellation?

THE WITNESS: Never received a notice of cancellation.

MR. SHARP: That's the same thing we asked the administrator.

THE COURT: I just asked him whether it was cancelled and he said no.

MR. SHARP: Well, it's just like these people didn't know it was cancelled either.

THE COURT: I asked him was it cancelled, not if he knew it was cancelled, was it cancelled.

MR. SHARP: He doesn't know.

THE WITNESS: To the best of my —

THE COURT: No, no. Do you have anybody else out here?

MR. SHARP: No, sir, not right now.

\* \* \*

[Page 383 LIONEL WILLIAMS]

MR. BLAN: Judge, can we just have a continuing objection?

THE COURT: Yes, sir.

MR. BLAN: To this testimony of Mr. Williams?

THE WITNESS: Mr. Lupia.

Q Lupia?

A Lupia.

Q And what did you tell Mr. Lupia?

A That I had paid for insurance, and no claim was allowed.

Q Did you get any satisfaction out of Mr. Lupia?

MR. BLAN: Object to the form.

THE COURT: Overruled.

THE WITNESS: I did not.

Q Did you get directed to some other person to call?

A No, not by him. I found on my own where the company was in California. I called the company in California.

Q Did you register the same complaint with the people in California?

\* \* \*

[Page 386 LIONEL WILLIAMS]

THE COURT: Overruled.

THE WITNESS: Yes, sir.

MR. WHITAKER: That's all I have got.

Thank you, Mr. Williams.

MR. BLAN: Judge, we move to exclude his testimony on the basis that it is not similar in time to the matter of the claim that was made in this case. No claim in this case has been made against Pacific Mutual and has shown the basis of the denial of the claim. Has not shown anything similar to what was presented and what's claimed in this case. We think it is highly irrelevant and immaterial, and it comes subsequent to the events that took place in this case. We move to exclude the testimony.

MR. HART: Judge, we would ask for limited instructions again be considered on the issue of notice prior to the Roosevelt City situation.

THE COURT: Notice to the company in California, this testimony is not for that purpose, because it does come subsequent to the events in this case. But you can receive this to determine any intent of Mr. Ruffin and his course of conduct. Go ahead.

**CROSS EXAMINATION**

[Page 387 LIONEL WILLIAMS]

**BY MR. HART:**

Q Mr. Williams, in your conversation with Pacific Mutual in California, when you called them up, did you learn that you actually had a policy with Pacific Mutual?

A They had the number.

Q Okay. So you got a policy number from them; is that correct?

A That's correct.

Q Okay. Do you know whether — did they tell you that the policy had been cancelled?

A They did not.

Q Did you know whether that policy with Pacific Mutual was in force when your employee incurred his medical claim?

A I assume that it was.

Q And you don't know any different today, do you?

A Whether or not it's in force?

Q Right, what you know.

A No, I don't know.

\* \* \*

**DIRECT EXAMINATION**

[Page 490 DEBORAH AULT]

**BY MR. SHARP:**

Q Ms. Ault, we are out of the presence of the jury. Now I want to make a showing of what your testimony would have been had I been allowed to ask you the questions while you were on the stand earlier this morning. I was asking you and I will just ask you now, did you get a phone call from the public, people that would call up and say that they had purchased insurance from Mr. Ruffin and had paid their premiums, had gone into the hospital or seen a doctor, made a claim only to find out that they did not have insurance?

A Yes, sir.

Q All right. Now, when you received that information as a receptionist, what did you do with that information?

A I informed Mr. Lupia that we had a problem with one of Lemmie's clients and I told him what the problem was and then he told me that he would talk to Lemmie and they would take care of it.

[Page 491 DEBORAH AULT]

Q Would you give him the name of the person that called?

A Yes.

Q And you would report to your boss, Mr. Lupia, the agency manager of the complaint?

A Yes, sir.

Q How many — do you have any specific recollection of the name of any of these people?

A No, sir.



Q When would the time have been — when would the times have been, the dates have been, we'll say when you first reported to the manager this situation?

A I don't know specific dates.

Q Well, a year and a month or a year and a season or something of that nature?

A Approximately 4 of 5 months after Lemmie started working for us.

Q Now, Lemmie started working in the summer of 19

—  
MR. WHITAKER: March of 1980.

MR. SHARP: March of 1980. So 6 months would be about November of 1980, approximately?

A Yes.

Q All right. And what did Mr. Lupia do, did he ever go, did he ever do anything to you, I mean by

[Page 492 DEBORAH AULT]

doing anything, do you know of any action he ever took?

A I know that he called Lemmie into his office and talked to him, but as to what they talked about, I don't know. I was not involved in that.

Q Say between November of 1980 and we'll say January of 1982, about how many such instances did you personally receive from the public, reports to Mr. Lupia, in your judgment?

A Two to three a week.

Q Two or three a week?

A Yes.

Q Thank you.

MR. SHARP: I would like to offer that after lunch.

THE COURT: Two or three a week?

THE WITNESS: Yes, sir.

THE COURT: Five hundred of them?

THE WITNESS: Yes, sir.

MR. WHITAKER: That wouldn't be 500, Your Honor. Two or three a week for a year, no, no, no.

THE COURT: 1982 — that's true.

MR. SHARP: But three would be 150 and two [...]

\* \* \*

[Page 498 DEBORAH AULT]

Q (BY MR. SHARP:) What were their complaints, just tell the jury, first of all the date when the complaints began.

A Five or six months after Lemmie started working.

Q And I think we have just established he started in the summer of '80?

A Yes, sir.

Q So, it would be about November of '80?

A Yes, sir.

Q Approximately?

A About that.

Q All right. Tell the ladies and gentlemen of the jury what were the complaints.

A Well —

MR. HART: If Your Honor please, that's a very broad question. We would object to the form of it.

THE COURT: The fact that she received complaints and then what she told somebody else would be what I would —

MR. SHARP: All right. When the people would call in, first of all I would like to establish

[Page 499 DEBORAH AULT]

who are the people that you're talking about that would call in? What —

A Clients.



Q Clients?

A Uh-huh.

Q Is that like policyholders?

A Yes, sir.

MR. BLAN: Object to it. It's leading. He's leading the witness and suggesting the answers.

THE COURT: Overruled. Go ahead.

Q (BY MR. SHARP:) And what type of information would they give you over the phone?

A They would tell me that they had purchased insurance with our company through Lemmie Ruffin and then when they had submitted a claim, they had been in the hospital, or seen a doctor and they were informed that they did not have insurance with us.

Q And what would you do with that information?

THE COURT: Now, ladies and gentlemen, this evidence is not received for the truth of it. I mean the fact that some complaint was made does not mean it is true. That is not what this is offered for.

\* \* \*

[Page 502 DEBORAH AULT]

three times a week?

A Approximately, I don't know, eight or nine months.

Q When you would give this information to Mr. Lupia, would he make a statement to you?

A Yes, he would tell me that he would talk with Lemmie about it and they would take care of the problem.

Q Did you have any other responsibilities other than to report to Mr. Lupia?

A No, sir.

Q Were there occasions that Mr. Ruffin would go into Mr. Lupia's office to your knowledge and they would have conversations?

A Yes, sir.

Q Do you have any knowledge as to what was being said and done?

A No, sir, I don't.

Q When these calls, these two to three calls a week, were they different people or were they the same people or a combination thereof?

A A combination. Sometimes it was the same person for either or either a different person from [ . . . ]

\* \* \*

[Page 513 DEBORAH AULT]

Q And you told him up until that time that you didn't know anything that went wrong in that office, isn't that right?

A Yes, sir.

Q Now, isn't it also true in the deposition, Ms. Ault, that you told Mr. Eden that you didn't know when those calls came in, you didn't know what time frame or what time period they were?

A I might have, I don't remember.

Q Well, you really don't, do you?

A I knew that they were five or six months after he started working.

Q You said they only continued for eight or nine months?

A I think so.

Q Then they stopped?

A As far as I know.

Q And you don't know the names of any of those people that called, do you?

[Page 514 DEBORAH AULT]

A No, sir.

Q You don't really know whether it was policyholders of Pacific Mutual or Union Fidelity or John Alden or any other company, do you?

A No, sir, they just told me that they had made a claim and did not have insurance.

Q Did you handle any claims through the office over here in Birmingham?

A No, sir.

Q You didn't look up to see whether or not they had a policy or a claim, did you?

A No, sir.

Q And you're saying that you received two or three of those a week?

A Yes, sir.

Q And you reported them to Mr. Lupia and he said that he would take care of them?

A Yes, sir.

Q You don't have any idea what happened from that point on, do you?

A No, I don't.

Q You don't know whether the claims were paid or not paid, do you?

A No, I don't.

Q And as a matter of fact none of those people ever wrote you a letter and said they had a complaint, did they?

[Page 515 DEBORAH AULT]

A I didn't personally receive a letter, no.

Q You didn't see any letters that anybody wrote to the office over here in Birmingham where they were making complaints about Mr. Ruffin, did you?

A No, sir.

Q And did any of those people ever sue Pacific Mutual or Lemmie Ruffin while you were working there?

A I don't know.

Q You never say any lawsuits against Lemmie Ruffin or Pacific Mutual by people making claims, any kind of complaints on the insurance policies?

A No, sir.

Q And you didn't see any lawsuit against Pacific Mutual by those people making any complaints on the policies during that time, did you?

A No, sir.

Q Did you ever receive any complaints from the insurance department about people who were making complaints against Lemmie Ruffin?

A I wouldn't have gotten those calls.

Q You never say any, did you?

[Page 516 DEBORAH AULT]

A No.

Q If they came in in writing you didn't see them, did you?

A No, sir.

Q But you opened all the mail, didn't you?

A Yes, sir, I did.

Q So, if they came in you would have seen them, would you?

A Not necessarily.

Q You opened all the mail, didn't you?

A I opened the mail as long as it was addressed to Pacific Mutual.

Q And you know, Ms. Ault, don't you, if the insurance department of the state had a complaint about Lemmie Ruffin, they would have written to Pacific Mutual or Mr. Lupia?

A It would have had Mr. Lupia's name on it.

Q You never got any of those, did you?

A No, sir.

Q Ms. Ault, you testified in the deposition, did you not, that you knew nothing at all about any transactions

that Lemmie had had with Roosevelt City?

A That's true.

\* \* \*

[Page 547 BONNIE SPENCER]

A No, sir.

A I want to ask you some questions, is that okay with you?

A Yes, sir.

Q Okay. At some point you thought something may not be right with your insurance, is that right?

A Yes, sir, I kind of felt like something was wrong.

Q And you got Mr. Johnson to check into it for you, is that correct?

A That's correct.

Q Did Mr. Johnson contact the home office of Pacific Mutual?

A Yes, sir.

Q Then as a result of that contact did Pacific Mutual pay you back all your money?

A Yes, sir.

Q And you got that, didn't you, ma'am?

A Yes, sir.

Q Okay. And did they do that shortly after Mr. Johnson contacted them?

A That's right.

Q How much money did Pacific Mutual give you

[Page 548 BONNIE SPENCER]

back?

A Four hundred and something, four hundred, I don't know exactly.

Q Four hundred and something dollars?

A Yes, sir.

Q But that was what you had paid Mr. Ruffin?

A Yes, sir.

Q Okay.

MR. HART: That's all. Thank you.

THE COURT: Anything further?

MR. WHITAKER: No.

THE COURT: Come help her down.

[Page 548 FRANK JOHNSON]

**FRANK JOHNSON,**

being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. WHITAKER:**

Q Would you give me your full name, please, sir.

A Frank Johnson.

[Page 549 FRANK JOHNSON]

Q Where are you employed, Mr. Johnson?

A Protective Industrial Insurance Company.

Q Is that what they call a debit insurance company?

A Yes, it is.

Q Would you explain to some of the ladies and gentlemen of the jury what a debit insurance company is?

A Debit insurance is an insurance company by which agents are employed to sell and collect premium and make personal collections at the home of the policyholders.

Q On a weekly or monthly basis?



A Usually on a weekly or monthly, even though some policyholders may pay in longer intervals, quarterly, semi-annually or perhaps annually.

Q Mr. Johnson, do you have a client by the name of Ms. Spencer in Tuscaloosa?

A No, I don't.

Q Do you represent Ms. Bonnie Spencer's daughter?

A Yes, I have a client in Tuscaloosa by the name of Ms. Thelma Weaver.

[Page 550 FRANK JOHNSON]

Q How is she related to Ms. Spencer?

A She's the daughter of Ms. Bonnie Spencer.

Q Mr. Johnson, sometime in the early fall of 1982, were you contacted by Ms. Spencer's daughter?

A Yes, I was.

Q As a result of that conversation did you go see Ms. Spencer?

A Yes, I did.

Q Would you explain to the ladies and gentlemen of the jury what you found when you went to see Ms. Spencer.

A Okay. First, Ms. Weaver told me that her mother had purchased a policy from somebody, and whoever this somebody was that she purchased the policy from says her daughter had known me for a long time and had known me to be her personal and family insurance person that they had confidence in. They wanted me to look into her mother's situation. She believed that the policy that she had bought that for some reason or another she didn't know the details of it, she wanted me to come up and perhaps enlighten her as to the details of her policy. And of course, I said to Ms. Weaver that just as soon as I have a

[Page 551 FRANK JOHNSON]

chance to come to Birmingham I'll stop by your mother's and look into her situation.

Q Did you go by her house?

A Yes, I did.

Q Tell us what you found there.

A Okay. When I went to Ms. Spencer's home the first thing I asked her — well, naturally I greeted her and after greeting then I told her that I was coming to look into what her policy, what problems might be. And I asked her what did she think that the problem was. She said, well, I've got a policy here.

Q What kind of policy was it?

A Insurance policy here.

Q What company?

A It was from Pacific Mutual.

Q Did you look at the policy?

A Yes, I did.

Q What did you find in the policy?

A I found that she had a policy that was issued in the amount of \$5,000 and it had a premium of about eighty-odd dollars per month which was due payable by some means, such as some preauthorized

[Page 552 FRANK JOHNSON]

bank draft or what have you of \$80.00 per month.

Q So, you found that her premium was \$80.00 a month and it was supposed to be paid in some check deduction or something like that?

A Yes, sir, I did.

Q Did she tell you how she was actually paying the premiums?

A Yes, sir. I said, well, I asked her, I said, well, are you paying this person eighty-something dollars a month? And she said no, she says I'm not paying them



eighty-something. She said, let me show you what I'm paying him. And it was at this point that she began to bring out business cards that revealed an amount that she was paying to an agent named Lemmie Ruffin, who was on the reverse side of the business card.

Q And what was the company name on that business card?

A It was an agency. It was some agency. I've can't [sic] totally recall, it was some agency.

Q Does the Lupia Agency sound familiar to you?

A Would you repeat that again?

[Page 553 FRANK JOHNSON]

Q Lupia agency?

A That sounds a bit familiar but I couldn't say for sure, but it sounds familiar.

Q Did you collect these receipts and add things up?

A Yes, sir, I did collect those receipts from her.

Q Did you subsequently write a letter to Pacific Mutual about the payments of this money?

A Well, I did subsequently but it was after talking with someone at Pacific Mutual by way of telephone, before this happened.

Q And can you look on what —

(Whereupon, Plaintiff's Exhibit Number 18 was marked for identification.)

Q (BY MR. WHITAKER:) Can you look on what's been marked for identification as Plaintiff's Exhibit Number 18 and tell me — is this the letter that you wrote or at least the first page of the letter that you wrote?

A Yes, sir, that is the letter that I wrote to Pacific Mutual.

[Page 554 FRANK JOHNSON]

MR. WHITAKER: I'm going to offer that.

MR. HART: I don't mind, it's just not on the notice.

THE COURT: Yes. Ladies and gentlemen, let me see the date on that.

THE WITNESS: October of '82.

THE COURT: October of '82, which is subsequent to the events of this case. This is not admitted for notice to Pacific Mutual of these transactions, but this piece of evidence goes to whatever the jury wishes to receive the evidence as it relates to the intentions of, plan or design of Mr. Lemmie Ruffin.

Q Now, if you can, can you see that from over there, do you want to come on down here?

A Well, I can't totally see it from here.

Q (BY MR. WHITAKER:) Come on down here. Can you look on this, come on up here with me, can you look on this and tell me when the premiums first started to be paid?

A Yeah, this first date here represents the bottom portion of an application that was given to Ms. Spencer on the initial application.

[Page 555 FRANK JOHNSON]

Q And that date is?

A It looks like.

Q It's March of 1981, does that look familiar to you?

A That looks familiar.

Q And do each one of these days and each one of these numbers represent payments made by Ms. Spencer?

A Yes, they did.

Q You can go on and sit down. And did you as a result of Plaintiff's Exhibit 18, were you able to recover money from Pacific Mutual?

A Yes, sir, I recovered the amount in question.  
MR. WHITAKER: That's all I've got.

**CROSS EXAMINATION [FRANK JOHNSON]**

**BY MR. HART:**

Q Mr. Johnson, after you looked into this, I understand you did contact Pacific Mutual; is that right?

A That is correct.

Q And did you contact Pacific Mutual out in

[Page 556 FRANK JOHNSON]

Newport Beach, California?

A Yes, sir, I did.

Q And that's where the home office is?

A Yes, sir, that's whom I contacted.

Q Okay. After you contacted Pacific Mutual in Newport Beach they responded to you didn't they?

A Yes, sir, they responded.

Q And did Pacific Mutual say they could either give Ms. Spencer coverage under the policy for the months she paid or she could get her money back, whichever she wanted?

A No, sir, they did not.

Q But they did give her all of her money back; is that correct?

A They sent the money requested.

Q Okay. And that was shortly after you had contact with them; is that right?

A That is correct.

Q And no lawsuit had been filed then?

A No, sir, no lawsuit. The only thing Ms. Spencer was interested in was getting her money back.

Q And she got that?

A She got that.

[Page 557 FRANK JOHNSON]

Q Shortly after you contacted the company and told them about it?

A Yes.

MR. HART: Thank you.

MR. WHITAKER: I have no further questions.

THE COURT: Thank you. You can step down.

MR. SHARP: We'd better get these things into evidence. These are documents that we have gotten from their files.

THE COURT: Were they produced —

MR. SHARP: Yes. Here is his contract, his Century contract.

THE COURT: Whatever.

MR. SHARP: Mark that one.

THE COURT: Mark them all.

MR. SHARP: We've got some answers to interrogatories, of course, we don't have the interrogatories, but it gives the name of the policies cancelled; is that correct?

THE COURT: The effective dates and —

MR. BLAN: We don't have any objections to the first one but we would object as to the list we prepared in response to Your Honor's order which [ . . . ]

\* \* \*

[Page 810 FINAL ARGUMENT]

going to ask you to return a verdict in our favor and I'm going to ask you for punitive damages. Can you do that, a substantial amount of money, can you do that? And every one of you by your silence, that yes, you could. I'm going to show you what we consider to be a considerable amount of money and I'm going to explain to you the reasons why a verdict should be returned for this

amount.

There are compensatory damages and there are punitive damages. As far as the compensatory damages go, Ms. Cleopatra Haslip, she had a Baptist Medical Center Princeton bill for \$2,200. She had a lawsuit filed December 17, 1982, 7 to 8 months after she got out of the hospital. The amount of the claim in that lawsuit was \$2,213.75. The court costs that she would be responsible for in paying that bill is \$37.00, the interest on that amount of money that she owed to Baptist Medical Center-Princeton is \$110.68. The attorney's fees sought by the lawyer for Baptist Medical Center-Princeton in that lawsuit was \$448.51. All outstanding. Dr. Richard Dale's bill was \$600. She's already testified that she's got it down to \$250 and that's what that exhibit shows to you, that [ . . . ]

\* \* \*

[Page 812 FINAL ARGUMENT]

lawyer be instructed not to argue that.

THE COURT: That's not part of the damages. Is that on the board there, hiring a lawyer?

MR. WHITAKER: There's no monetary amount there, Your Honor. We're not claiming any fees, it's just the idea that she had to hire a lawyer.

THE COURT: Let's don't do that.

MR. WHITAKER: Five years of waiting, in February of 1982 she finds out hospital urologists they don't wait, they sued her, she had some judgments against her, her credit is damaged, must do without, suits on her credit report, bad credit. Continued frustration and worry and anxiety for five years. She should have been paid in January of '82. She should have been paid probably, maybe more correctly should have been paid

in February of '82. Compensatory damages we claim is as a result of what she had to suffer over the last five years, not only this amount of money that she owes but we think it should bring a verdict in the amount of \$200,000. We think all of this damage she's entitled to \$200,000 compensatory damages.

Now, I explained to you this: I told you [ . . . ]

\* \* \*

[Page 814 FINAL ARGUMENT]

state of Alabama we're asking that you return a verdict in favor of Ms. Haslip in punitive damages in the amount of \$3,000,000 in total damages to Ms. Haslip for \$3,200,000.

Ms. Alma Calhoun who purchased life insurance and medical care for her family and herself relied on insurance for the protection of her family and herself, was cut each pay period, didn't want the public hospital to pay and became ill and found out that she had no insurance, paid for \$1,000,000 policy that they promised. We're asking that you return a verdict in the amount of \$510,000 representing \$10,000 compensatory damages, \$500,000 punitive damages.

We're asking the same amount for Cynthia Craig. Cynthia Craig is 32 years old now and was 27 at the time she purchased her own insurance, during that period of time when it was her responsibility, no one else looks after her, she does live with her parents but she's self-supporting. She would have never known of the lapse. We're asking for damages for her injuries, compensatory damages of \$10,000, punitive damages in the amount of \$500,000 for a [ . . . ]





**APPELLEES' BRIEF**

**VI. THE AWARD OF PUNITIVE DAMAGES, GIVEN THE FACTS OF THIS CASE, IS NOT EXCESSIVE AS A MATTER OF LAW, NOR WAS IT THE RESULT OF BIAS, PASSION, CORRUPTION OR OTHER IMPROPER MOTIVE AND THEREFORE SUBJECT TO REMITTITUR BY THIS COURT.**

As stated in *Hammond v. City of Gadsden*, 493 So. 2d 1374 (Ala. 1986):

We begin by recognizing that the right to a trial by jury is fundamental, a constitutionally guaranteed right, Art. I, Section 11, Const. 1901, and therefore that a jury verdict may not be set aside unless the verdict is flawed, thereby losing its constitutional protection. It is only in those cases that a trial court, pursuant to A. R. Civ. P. 59(f), and this court, pursuant to Code 1975, Section 12-22-71, may interfere with a jury verdict.

*Id.*, at 1378

In *Hammond* this Court stated its desire to have the trial judge give serious consideration to the factors applied to remittitur. This Court now requires the trial courts to record reasons for interfering or refusing to interfere with a jury verdict. *Id.*, at 1379. When the trial court refuses to grant a new trial because the judge does not believe the verdict is excessive or based on some improper motive, that the rebuttable presumption

surrounding a jury verdict is strengthened. *Black Belt Wood Co. v. Sessions*, 514 So. 2d 1249 (Ala. 1986). See also *International Union, v. Palmer*, 267 Ala. 683, 104 So. 2d 691 (1956); *Birmingham Elec. Co. v. Howard*, 250 Ala. 421, 34 So. 2d 830 (1948).

The trial court gave serious consideration to the award:

As has been stated throughout this Order, it is the opinion of this court that the conduct in this case evidenced intentional, malicious, gross, or oppressive fraud. In addition to the acts of Mr. Ruffin, the testimony draws an inference that Mr. Patrick Lupia, manager of the local Pacific Mutual office, had notice of past problems with Mr. Ruffin including, but not limited to, prior acts of fraud, and that he participated in the decision to have the cancellation notice sent to the Pacific Mutual Agency rather than to the insured. It goes without saying that it is highly desirable to discourage others, similarly situated from similar conduct.

The trial judge did not consider the awards to be excessive as a matter of law:

[N]or is the verdict based upon bias, passion, corruption, or other improper motive. The jury seems to fashioned [sic] their awards in proportion to the damage done each plaintiff; awarding the most damaged plaintiff, Cleopatra Haslip, the larger award and the least damaged plaintiff, Eddie Hargrove, the least award.

The jury was composed of male and female, white and black, and in the opinion of the Court, acted conscientiously throughout the trial (R. 334).

Based upon the uncontroverted evidence presented at trial it simply cannot be said that the verdict is excessive as a matter of law, or that it was based upon some improper motive. Ruffin intentionally committed fraud by continuing to collect insurance premiums on canceled policies. Lupia participated just as surely as if he went out to collect the money himself. The late premium and cancellation notices were diverted to the Pacific Mutual offices. This is a case of gross deception, not of poor judgment, as may be found in bad faith cases. The amount, if anything, was too low given the expressed purpose of punitive damages to punish and prevent a recurrence [sic]. This state's legislature, in enacting the recent Tort Reform Bill, has recognized the seriousness of fraud where there can be shown a pattern or practice, and left it to the jury's discretion to award punitive damages for the punishment/prevention effect. The trial court made the required review and found no fault with the amount. This Court should not impose its personal views on the amount awarded and should allow the verdict to remain. See, *B & M Homes v. Hogan*, 376 So. 2d 667 (Ala. 1979); *Vest v. Gay*, 275 Ala. 286, 154 So. 2d 297 (1963); *Airheart v. Green*, 267 Ala. 689, 104 So. 2d 687 (1958); *National Sur. Co. v. Mabry*, 139 Ala. 217, 35 So. 698 (1903).



## APPENDIX C

**EXCERPT FROM APPELLEES' BRIEF  
IN OPPOSITION TO PACIFIC MUTUAL'S  
APPLICATION FOR REHEARING**

Pacific Mutual had the opportunity to capitalize on all these procedural safeguards. The trial court prepared a *Hammond* opinion in which it noted that the jury's verdict was neither flawed nor excessive in view of the evidence of intentional, malicious, gross and oppressive fraud that was presented at trial. This Court's affirmation of the trial court's order was correct and, according to the law, Mrs. Haslip's award of punitive damages does not indicate a lack of fundamental fairness. "Some discretion must be afforded to juries to assess punitive damages as they see fit." *Tapley*, at 377. The plaintiff is entitled to his/her due process of law!

In view of the grossly fraudulent conduct committed by the defendants in this case, the imposition of \$1,040,000 in punitive damages was fitting; indeed, it will serve as punishment and the useful function of deterring others similarly situated from engaging in egregious conduct.

**APPENDIX D**



**STATES ALLOWING PUNITIVE DAMAGES  
ON A RESPONDEAT SUPERIOR BASIS**

1. Alabama	<i>Standard Oil Co. of Kentucky v. Gunn</i>	234 Ala. 598, 176 So. 332 (1937)
2. Arizona	<i>Western Coach Corp. v. Vaughn</i>	9 Ariz. App. 336, 452 P.2d 177 (1969)
3. Arkansas	<i>Miller v. Blanton</i>	213 Ark. 246, 210 S.W.2d 293 (1948)
4. Delaware	<i>Ford v. Charles Warner Co.</i>	15 Del. (Marv.) 88, 37 A. 39 (1893)
5. Georgia	<i>Atlantic Greyhound Corp. v. Austin</i>	72 Ga. App. 289, 33 S.E.2d 718 (1945)
6. Indiana	<i>Hibbscham Pontiac, Inc. v. Batchelor</i>	266 Ind. 310, 362 N.E.2d 845 (1977)
7. Kansas	<i>Wheeler &amp; Wilson Manufacturing Co. v. Boyce</i>	36 Kan 350, 13 P. 609 (1887)

8. Kentucky     *Memphis & Cincinnati Packet Co. v. Nagel*     97 Ky. 9, 29 S.W. 743 (1895)
9. Maine     *Goddard v. Grand Truck Railway of Canada*     57 Me. 202, 223-24 (1869)
10. Maryland     *Embrey v. Holly*     442 A.2d 966 (Md. 1982)
11. Michigan     *Lucas v. Michigan Central Railroad Co.*     98 Mich. 1, 56 N.W. 1039 (1893)
12. Mississippi     *Sandifer Oil Co. v. Drew*     220 Miss. 609, 71 So.2d 752 (1954)     D 2.
13. Missouri     *Rinker v. Ford Motor Co.*     567 S.W.2d 655 (Mo. App. 1978)
14. Montana     *Rinkman v. Safeway Stores*     124 Mont. 451, 227 P.2d 607 (1951)
15. North Carolina     *Clemmons v. Life Insurance Co. of Georgia*     274 N.C. 416, 163 S.E.2d 761 (1968)
16. Oklahoma     *Kurn v. Radencic*     193 Okla. 126, 141 P.2d 580 (1943)
17. Oregon     *Stroud v. Denny's Restaurant, Inc.*     271 Ore. 430, 532 P.2d 790 (1975)
18. Pennsylvania     *Chuy v. Philadelphia Eagles Football Club*     595 F.2d 1265, 1278 (3d Cir. (1979)
19. South Carolina     *Beauchamp v. Winnsboro Granite Corp.*     113 S.C. 522, 101 S.E. 856 (1920)     D 3.
20. Tennessee     *Odum v. Gray*     508 S.W.2d 526, 533 (Tenn. 1974)

**APPENDIX E**



# PUNITIVE DAMAGES CASES

CASE NAME	PUNITIVE DAMAGES	COURT ACTION
ALABAMA CASES		
1. <i>Bowles v. Lowery</i> 5 Ala. 555 (1912)	\$5,000	<i>Reversed and remanded</i> The damage verdict as excessive.
2. <i>Gulf States Steel Co. v. Comstock</i> 17 Ala. App. 430 (1920)	\$500	<i>Remittitur for settlement for less than \$300 based on damage verdict.</i>
3. <i>Evers-Jordan Furniture Co. v. Hartzog</i> 237 Ala. 407 (1939)	\$500	Remittitur to \$250
4. <i>Alabama Music Co., Inc., et al. v. Emogean Nelson</i> 282 Ala. 517, 213 So.2d 250 (1968)	\$2,300	<i>Affirmed</i>

5. *Water Works and Sanitary Sewer Board of the City of Montgomery v. Camilla Webber Norman*  
282 Ala. 41, 208 So.2d 788 (1968)  
*re'hrg denied*  
(April 4, 1968) *Affirmed*
6. *S.S. Kresge Co., d/b/a K-Mart v. Arien Ruby*  
348 So.2d 484 (1977) *Affirmed*
7. *James D. Mathis v. Jim Skinner Ford, Inc., a corp., et al.*  
351 So.2d 113 (1978) *Affirmed*
8. *Winn-Dixie Montgomery, Inc. v. B. Henderson*  
353 So.2d 1380 (1977)  
*re'hrg denied*  
(Feb. 3, 1978) *Reversed and remanded*

9. *Robert F. Jakob v. First Alabama Bank of Montgomery*  
361 So.2d 1017 (1978)  
*re'hrg denied*  
(Aug. 25, 1978) *Affirmed*
10. *Gulf Oil Corporation v. Spriggs Enterprises, Inc.*  
388 So.2d 518 (1980) *Reversed and remanded*
11. *Record Data International, Inc., et al. v. Robert Clinton Nichols, etc., et al.*  
381 So.2d 1 (1979)  
*Application for re'hrg overruled*  
(March 7, 1980) *Affirmed*
12. *Gulf Atlantic Life Insurance Company, a corporation v. Rosezenna Barnes*  
405 So.2d 916 (1981) *Remittitur of punitive damages in excess of \$100,000*

13. *James H. Earnest v. Pritchett-Moore, Inc., et al.*  
401 So.2d 752 (1981) *Affirmed* \$10,000
14. *Shiloh Construction Company, Inc., a Corporation v. Mercury Construction Corporation*  
392 So.2d 809 (1980)  
*re'hrg denied*  
(Jan. 9, 1981) *Affirmed* \$559,966.60
15. *J.C. Jacobs Banking Co., a corp. v. W. Loy Campbell*  
408 So.2d 834 (1981)  
*re'hrg denied*  
(Nov. 25, 1981) *Affirmed* \$2,000,000
16. *Glen Smothers, et al. v. Onie Speake, et al.*  
420 So.2d 75 (1982) *Affirmed* \$10,000

17. *Charles Atkins, d/b/a Atkins Ford Sales v. Mark Steven Drake*  
437 So.2d 469 (1983) *Affirmed* \$15,000
18. *Continental Assurance Company, a Corporation v. Freddie E. Kountz*  
461 So.2d 892 (1984) *Affirmed* \$23,000
19. *Aetna Life Insurance Company v. Margaret W. Lavoie and Roger J. Lavoie, Sr.*  
470 So.2d 1060 (1984) *Affirmed* \$3,500,000
20. *Osborne Truck Lines, Inc. and Samuel Dale Cartee v. Roba Mae Langston, a minor, etc., Osborne Truck Lines, Inc. et al. v. James Samuel Langston III, a minor, etc., Osborne Truck Lines Inc., et al. v. Tommy Whitten*  
454 So.2d 1317 (1984) *Affirmed* \$2,500,000



21. <i>David R. Todd v. United Steelworkers of America, AFL-CIO-CLC, an unincorporated association</i> 441 So.2d 889 (1983) (as amended Feb 8, 1984)	\$2,000,000	Remittitur of all damages in excess \$26,131
22. <i>National Security Fire &amp; Casualty Company, et al. v. Bowen</i> 447 So.2d 133 (1983) <i>re'hrg denied</i> (Mar. 2, 1984)	\$1,500,000	<i>Affirmed</i>
23. <i>Nathan Raley and Nell Raley v. Citibank of Alabama/Andalusia</i> 474 So.2d 640 (1985)	\$90,000	<i>Affirmed</i>
24. <i>Clayton Shrout v. Bobby D. Thorsen</i> 470 So.2d 1222 (1985)	\$3,000,000 punitive \$40,000 compensatory	<i>Affirmed</i>

25. <i>American Pioneer Life Insurance Company and American Pioneer Corporation v. Fred C. Sandlin, Jr., as Executor of the estate of E. Kenneth Ayres, deceased</i> 470 So.2d 657 (1985)	\$3,000,000 punitive \$100,000 compensatory	<i>Affirmed</i>
26. <i>Alabama Farm Bureau Mutual Casualty Insurance Company, Inc. v. John K. Brewton and Shirley C. Brewton</i> 517 So.2d 599 (1987)	\$10,000	<i>Reversed</i>
27. <i>Mary Nell Hollis, Administratrix of the Estate of Joe Solomon Stokes v. Douglas Lee Scott</i> 518 So.2d 576 (1987)	\$1,000,000	<i>Affirmed</i>
28. <i>Black Belt Wood Company, Inc. v. Sesson. et al.</i> 514 So.2d 1249 (1987)	\$3,500,000	<i>Affirmed</i>

29. <i>Baldwin Mutual Ins. Co., a Corporation, and Frank B. Turner, an Individual v. Richard M. Brantley</i> 518 So.2d 32 (1987)	\$50,000	<i>Affirmed</i>
30. <i>Aetna Life Insurance Co. v. Margaret W. Lavoie and Roger J. Lavoie, Sr.</i> 505 So.2d 1050 (1987)	\$3,500,000	Remittitur of \$3,000,000
31. <i>Richard E. Kabel v. Myrtle M. Brady</i> 519 So.2d 912 (1987)	\$162,500	<i>Affirmed</i>
32. <i>Buford Whitt V. Sally Jones Hulsey, et al.</i> 519 So.2d 901 (1987)	\$14,500	<i>Affirmed</i>

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33. <i>Herman Ensor and Ensor, Baccus &amp; Williamson, P.A. v. Misty Wilson, a minor, who sues by and through her next friend and natural father, Robert Wilson</i> 519 So.2d 1244 (1987)	\$2,500,000	<i>Affirmed</i>
34. <i>Southern Life and Health Insurance Company v. Robert C. Smith, Jr. v. Southern Life and Health Insurance Company</i> 518 So.2d 77 (1987)	\$35,000	<i>Affirmed</i>
35. <i>City Bank of Alabama and Guy Sutterer v. Robert Eskridge</i> 521 So.2d 931 (1988)	\$62,500	<i>Affirmed</i>

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36. *Alabama Power Company v. Kay Capps, administratrix of the estate of Richard D. Capps, deceased*  
519 So.2d 1328 (1988)      \$500,000      *Affirmed*
37. *Fruehauf Corporation v. Donnell Welch and Kenworth of Dothan, Inc.*  
519 So.2d 502 (1988)      \$100,000      *Affirmed*  
Punitive damages are in the discretion of the jury

CASE NAME	PUNITIVE DAMAGES	COURT ACTION
CALIFORNIA CASES:		
<i>Morris v. Standard Oil Co.</i> 188 Cal. 468 (1922)	\$ 25,000	Remand for new trial re damages; excessive.
<i>Wilkinson v. Singh</i> 93 Cal.App. 37 (1928)	1,500	Remanded for new trial unless \$300.00.
<i>Livesey v. Stock</i> 208 Cal. 315 (1929)	50,000	New trial ordered unless remitted for \$10,000.
<i>Booth v. Peoples Finance, etc. Co.</i> 124 Cal.App. 131 (1932)	1,500	Remanded for new trial unless remitted for \$500.
<i>Washer v. Bank of America National Trust &amp; Sav. Assoc.</i> 87 Cal.App.2d 501 (1948)	80,000	Reversed by trial judge on jnov; affirmed.
<i>Finney v. Lockhart</i> 35 Cal.2d 161 (1950)	2,000	<i>Affirmed.</i>



<i>Luke v. Mercantile Acceptance Corp.</i> 111 Cal.App.2d 431 (1952)	2,500	Retrial ordered on issue of punitive damages.	-E 12-
<i>Larrick v. Gilloon</i> 176 Cal.App.2d 408 (1959)	10,000	Upheld.	
<i>DiGiorgio Fruit Corp. v. AFL-CIO</i> 215 Cal.App.2d 560 (1963)	50,000	Upheld.	
<i>Toole v. Richardson-Merrell, Inc.</i> 251 Cal.App.2d 689 (1967)	500,000	New trial ordered unless remitted to \$250,000.	
<i>Oakes v. McCarthy Co.</i> 267 Cal.App.2d 231 (1968)	77,500	Trial judge reduced to \$59,300; affirmed.	
<i>Cunningham v. Simpson</i> 1 Cal.3d 301 (1969)	25,000 Unsegregated	Unsegregated damages excessive; remand for new trial.	
<i>Ferraro v. Pacific Finance Corp.</i> 8 Cal.App.3d 339 (1970)	33,000	<i>Affirmed.</i>	

<i>Fletcher v. Western National Life Ins. Co.</i> 10 Cal.App.3d 376 (1970)	640,000	Reduced to \$180,000.	-E 13-
<i>Wetherbee v. United Ins. Co.</i> 18 Cal.App.3d 266 (1971)	500,000	Reduced to \$200,000.	
<i>Forte v. Nolf</i> 25 Cal.App.3d 656 (1972)	Unsegregated Damages	Remand on issue of damages; \$20,000 punitives excessive.	
<i>Field Research Corp. v. Patrick</i> 30 Cal.App.3d 603 (1973)	150,000	Upheld.	
<i>Schroeder v. Auto Driveaway Co.</i> 11 Cal.3d 908 (1974)	10,000	Upheld.	
<i>Bertero v. National General Corp.</i> 13 Cal.3d 43 (1974)	625,000	<i>Affirmed</i> as proper.	
<i>Roemer v. Retail Credit Co.</i> 44 Cal.App.3d 926 (1975)	250,000	<i>Affirmed</i>	

<i>Farmy v. College Housing, Inc.</i> 48 Cal.App.3d 166 (1975)	45,000	Trial court reversed damages; insufficient evidence for punitive.
<i>Beck v. State Farm Mut. Auto Ins. Co.</i> 54 Cal.App.3d 347 (1976)	75,000	Trial judge denied jury; appellate court modified to strike all punitives.
<i>Allard v. Church of Scientology</i> 58 Cal.App.3d 439 (1976)	250,000	Reduced by appellate court to \$50,000.
<i>Weisenburg v. Molina</i> 58 Cal.App.3d 478 (1976)	28,240.18	<i>Affirmed.</i>
<i>Merlo v. Standard Life &amp; Acc. Ins. Co.</i> 59 Cal.App.3d 5 (1976)	500,000	Reversed as excessive.
<i>Zhadan v. Downtown L.A. Motors</i> 66 Cal.App.3d 481 (1976)	175,000 first trial	Trial judge ordered new trial unless remitted to \$50,00; plaintiff did not remit. (App. Ct. affirmed trial judge.)

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<i>Little v. Stuvvesant Life Ins. Co.</i> 67 Cal.App.3d 451 (1977)	2,500,000	Appellate court remanded for new trial unless reduced to \$250,000.
<i>Henderson v. Scurity National Bank</i> 72 Cal.App.3d 764 (1977)	125,000	Reversed punitive award due to insufficient evidence; affirmed.
<i>Neal v. Farmers Insurance Exchange</i> 21 Cal.3d 910 (1978)	1,518,637	Reduced to \$740,000.
<i>Walker v. Signal Companies, Inc.</i> 84 Cal.App.3d 982 (1978)	215,000	<i>Affirmed.</i>
<i>Grimshaw v. Ford Motor Company</i> 119 Cal.App.3d 757 (1978)	125,000,000	Reduced by trial court to 3.5 million; <i>affirmed.</i>
<i>Egan v. Mutual of Omaha Ins. Co.</i> 24 Cal.3d 809 (1979)	5,000,000	Reversed as excessive.
<i>Agarwal v. Johnson</i> 25 Cal.3d 932 (1979)	47,000	<i>Affirmed.</i>

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<i>Bindrim v. Mitchell</i> 92 Cal.App.3d 61 (1979)	25,000	<i>Affirmed.</i>
<i>Delos v. Farmers Insurance Group, Inc.</i> 93 Cal.App.3d 642 (1979)	4,000,000	Trial court ordered new trial unless remitted to \$350,000; affirmed on appeal.
<i>Zhadan v. Downtown L.A. Motors</i> 100 Cal.App.3d 821 (1979)	90,000 second trial	Damages in second trial affirmed on appeal.
<i>Miller v. Elite Ins. Co.</i> 100 Cal.App.3d 739 (1980)	150,000	<i>Affirmed.</i>
<i>Rosener v. Sears, Roebuck &amp; Co.</i> 110 Cal.App.3d 740 (1980), appeal dismissed, 450 U.S. 1051 (1981)	10,000,000	Remand for new trial unless remitted for \$2.5 million.
<i>Schomer v. Smidt</i> 113 Cal.App.3d 828 (1980)	16,000	<i>Affirmed.</i>

<i>Pistorius v. Prudential Ins. Co.</i> 123 Cal.App.3d 541 (1981)	1 million	<i>Affirmed.</i>
<i>Chodos v. Insurance Co. of North America</i> 126 Cal.App.3d 86 (1981)	200,000	<i>Affirmed.</i>
<i>Godfrey v. Steinpress</i> 128 Cal.App.3d 154 (1982)	60,000	<i>Affirmed.</i>
<i>Austero v. Washington National Ins. Co.</i> 132 Cal.App.3d 408 (1982)	200,000	<i>Affirmed.</i>
<i>Carol Burnett v. National Enquirer, Inc.</i> 144 Cal.App.3d 991 (1983)	1.3 million	Trial court remitted to \$750,000. Appellate court remanded for new trial unless remitted to \$150,000.
<i>Vossler v. Richards Manufacturing Co.</i> 143 Cal.App.3d 952 (1983)	500,000	<i>Affirmed.</i>
<i>Krusi v. Bear Stearns &amp; Co.</i> 144 Cal.App.3d 664 (1983)	50,000	Remanded.



<i>Seaman's Direct Buying Service, Inc. v. Standard Oil Co.</i> 36 Cal.3d 752 (1984)	11 million	Trial judge ordered new trial unless remitted to 7 million; underlying judgments reversed by appellate court for retrial.
<i>Moore v. American United Life Insurance Co.</i> 150 Cal.App.3d 610 (1984)	2.5 million	<i>Affirmed.</i>
<i>Betts v. Allstate Insurance Co.</i> 154 Cal.App.3d 688 (1984)	3 million	<i>Affirmed.</i>
<i>Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.</i> 155 Cal.App.3d 381 (1984)	80,000	<i>Affirmed.</i>
<i>Fleming v. Safeco Insurance Co.</i> 160 Cal.App.3d 31 (1984)	116,000	<i>Affirmed.</i>
<i>Goshgarian v. George</i> 161 Cal.App.3d 1214 (1984)	15,000	Vacated by appellate court unless remitted to \$7,500.

<i>Sanchez-Corea v. Bank of America</i> 38 Cal.App.3d 982 ( 985)	1 million	Trial judge ordered new trial; Supreme Court reversed order.
<i>Sprague v. Equifax Inc.</i> 166 Cal.App.3d 1012 (1985)	5 million	Trial judge ordered new trial unless remitted to 1 million; appellate court affirmed trial judge.
<i>Jahn v. Brickey</i> 168 Cal.App.3d 399 (1985)	250,000	Trial judge ordered new trial unless remitted to \$100,000; appellate court affirmed trial court.
<i>Wayte v. Rollins International, Inc.</i> 169 Cal.App.3d 1 (1985)	1.5 million	Remitted to \$308,000.
<i>Frazier v. Metropolitan Life Ins. Co.</i> 169 Cal.App.3d 90 (1985)	8 million	Trial court remitted to 2 million; appellate court vacated entirely.
<i>Greenfield v. Spectrum Investment Corp.</i> 174 Cal.App.3d 111 (1985)	442,500	Trial judge ordered new trial unless remitted to \$215,000; appellate court reinstated judgment because of failure to state reasons for new trial.

<i>California Shoppers, Inc. v. Royal Globe Insurance Co.</i> 175 Cal.App.3d 1 (1985)	2 million	judgment granted by trial judge; affirmed by appellate court.
<i>Troensegaard v. Silvercrest Industries, Inc.</i> 175 Cal.App.3d 218 (1985)	55,000	Punitive damages vacated.
<i>Ball v. Posey</i> 176 Cal.App.3d 1209 (1986)	40,000	<i>Affirmed.</i>
<i>Ramona Manor Convalescent Hospital v. Care Enterprises</i> 177 Cal.App.3d 1120 (1986)	2.5 million	Reversed for retrial.
<i>Pusateri v. E.F. Hutton &amp; Co., Inc.</i> 180 Cal.App.3d 247 (1986)	160,000	<i>Affirmed.</i>
<i>Campbell v. McClure</i> 182 Cal.App.3d 806 (1986)	100,000	<i>Affirmed.</i>

<i>Dugan v. Hasso</i> 185 Cal.App.3d 1184 (1986)	1.1 million	Reversed for retrial.
<i>Flyer's Body Shop Profit Sharing Plan v. Tigor Title Insurance Co.</i> 185 Cal.App.3d 1149 (1986)	250,000	Vacated on appeal.
<i>Travelers Insurance Co. v. Leshner</i> 187 Cal.App.3d 169 (1986)	1.5 million	Vacated on appeal.

**UNPUBLISHED OPINIONS (CALIFORNIA):**

<i>Rosendin v. Avco Lycoming Div.</i> No. 202, 715 (Super. Ct. Santa Clara County, Cal. June 7, 1972)	10 1/2 million	Motion for new trial granted; punitives excessive.
<i>Sullivan v. Kaiser Foundation Health Plan, Inc.</i> , No. 740, 729 (Super. Ct. San Diego County, Cal. September 26, 1983)	400,000	Motion for new trial granted on issue of punitive damages only.

<i>Baysinger v. Pacific Mutual Life Ins. Co.</i> No. 299656 (Super Ct. Sacramento County, Cal. October 24, 1983)	400,000	Trial court reduced to \$250,000.
<i>Satalich v. State Farm Mutual Auto Ins. Co.</i> , No. 31-76-01 (Super. Ct. Orange County, Cal. April 9, 1984)	1,007,000	Case settled with motion for new trial and jnov pending.
<b>FEDERAL CASES:</b>		
<i>Roginsky v. Richardson-Merrell, Inc.</i> 378 F.2d 832 (2d Cir. 1967)	100,000	Award reversed on appeal.
• <i>Gillham v. Admiral Corp.</i> 523 F.2d 102 (6th Cir. 1975)	100,000	Trial court granted jnov to set aside damages; reversed by 6th Cir.
<i>Johnson v. Husky Industries, Inc.</i> 536 F.2d 645 (6th Cir. 1976)	212,500	Reversed: insufficient evidence under Tennessee law to submit issue of punitive damages to jury.

<i>Thomas v. American Cystoscope Makers, Inc.</i> 414 F.Supp. 255 (E.D. Pa. 1976)	200,000	Trial judge granted jnov: punitive damage award reversed.
<i>McIntyre v. Everest &amp; Jennings, Inc.</i> 575 F.2d 155 (8th Cir. (1978)	45,000	Vacated by trial judge; 8th Cir. affirmed.
<i>Kicklighter v. Nails by Jannee, Inc.</i> 616 F.2d 734 (5th Cir. 1980)	60,000	Trial judge granted jnov to set aside; 5th Cir. affirmed.
<i>Maxey v. Freightliner Corp.</i> 625 F.2d 395 (5th Cir. 1980)	10 million	Trial judge set aside punitive damage award; affirmed by 5th Cir.; rehearing by full court resulted in remand on ancil- lary issue.
• <i>Dorsey v. Honda Motor Co.</i> 655 F.2d 650 (5th Cir. 1981)	5 million	5th Cir. affirmed jury award.



# OTHER STATE CASES:

<i>Ellis v. Golconda Corp.</i> 352 So.2d 1221 (Fla. Dist. Ct. App. 1977)	70,000	Reversed; insufficient evidence.	-E 24-
<i>Newding v. Kroger Co.</i> 554 S.W.2d 15 (Tex. Civ. App. 1977)	60,000	Trial court granted jnov setting aside punitive damages; affirmed.	
<i>Rinker v. Ford Motor Company</i> 567 S.W.2d 655 (Mo. Ct. App. 1978)	460,000	No opinion as to judgment amount.	
<i>Sturm, Ruger &amp; Co. v. Day</i> 594 P.2d 38 (Alaska 1979); modified 615 P.2d 621 (Alaska 1980); on rehearing 627 P.2d 204 (Alaska 1981)	2.9 million	Alaska Supreme Court remanded for new trial; on rehearing approved entry of remitted \$500,000.	
<i>Cantrell v. Amarillo Hardware Co.</i> 602 P.2d 1326 (Kan. 1979)	18,500	<i>Affirmed.</i>	

<i>Gryc v. Dayton-Hudson Corp.</i> 297 N.W. 727 (Minn. 1980)	1 million	<i>Affirmed.</i>	-E 25-
<i>Wussow v. Commercial Mechanisms, Inc.</i> 293 N.W.2d 897 (Wis. 1980)	70,000	<i>Affirmed.</i>	
<i>Hall v. Consolidated Edison Corp.</i> 104 Misc.2d 565, 428 N.Y.S.2d 837 (Sup. Ct. 1980)	5 million	Reversed unless remitted to \$50,000.	
<i>United School Dist. No. 490 v. Celotex Corp.</i> 629 P.2d 196 (Kan. Ct. App. 1981)	600,000	<i>Affirmed.</i>	
<i>Leichtamer v. American Motors Corp.</i> 424 N.E.2d 568 (Ohio 1981)	1.1 million	<i>Affirmed.</i>	
<i>Moore v. Remington Arms Co.</i> 427 N.E.2d 608 (Ill. 1981)	85,000	Reversed.	

*Forrest City Mach. Works, Inc.  
v. Aderhold*  
616 S.W.2d 720 (Ark. 1981)      500,000      Reversed.

*Harley-Davidson Motor Co.  
v. Wisniewski*  
437 A.2d 700 (Md. Ct.  
Spec. App. 1981)      1.9 million      Vacated.

*Rawlings Sporting Goods Co.  
v. Daniels*  
619 S.W.2d 435 (Tex. Civ.  
App. 1981)      750,000      Affirmed.

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#### UNPUBLISHED OPINIONS (OTHER):

*Qstopowitz v. Wm. S. Merrell Co.*  
N.Y.L.J. January 11, 1967      850,000      New trial ordered unless  
Sup. Ct., Westchester County, N.Y.)      remitted to \$100,000.  
(cited in *Roginsky, supra*,  
378 F.2d at 834, n. 3)

*Stambaugh v. Intl. Harvester Co.*  
No. 78-L-2775 (Cir. Ct., St.  
Clair Cty., Ill., October 26, 1979)      15 million      Trial judge remitted to 7.5  
million.

*Ashland Oil Co. v. BiPetro, Inc.*  
S.D. Ill. (November 1980)      300 million      Reversed.

*Pring v. Penthouse Magazine*  
D. Wyo. (March 1981)      25 million      Reduced to 12.5 million.  
(*rev'd on other grounds*  
10th Cir., November 5, 1982)

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See also Wheeler, "The Constitutional Case For Reforming Punitive Damages Procedures,"  
69 Virginia Law Review 269, 1983. The author notes at 288:

"... out of forty-five reported cases decided by the New York appellate  
courts in which the court either determined whether there was sufficient  
evidence of malice to support any punitive award or determined whether  
the jury had awarded an excessive amount of punitive damages, thirty-  
five punitive damages cases were remitted or reversed." (Footnote  
omitted.)

**APPENDIX F**

**ALABAMA STATUTES LIMITING  
THE AMOUNT OF PUNITIVE  
DAMAGES RECOVERABLE**

Code of Alabama 5-19-19 [Charge of Interest in excess of maximum, except bona fide error or accident, double damages or ten times the excess charge].

Code of Alabama 6-6-314 [unlawful detainer, double damages].

Code of Alabama 8-19-10(a)(2) [using deceptive trade practices in dealings with consumers, treble damages].

Code of Alabama 8-19-5(19) and (20) [using deceptive trade practices in dealings with nonconsumers, treble damages].

Code of Alabama 37-2-18 [liability for excessive rates charged by common carriers, treble damages].

Alabama Rules of Appellate Procedure, Rule 38 [frivolous appeals in civil cases, double costs].



**CALIFORNIA STATUTES LIMITING  
THE AMOUNT OF PUNITIVE  
DAMAGES RECOVERABLE**

1. Code of Civil Procedure Section 732 [waste of property, treble damages].
2. Code of Civil Procedure Section 733 [trespass, treble damages].
3. Code of Civil Procedure Section 1174 [unlawful detainer, treble damages].
4. Civil Code Section 1716 [solicitation of payment for goods or services not ordered, treble damages].
5. Civil Code Section 1745 [wilful violation of sale of fine prints law, treble damages].
6. Civil Code Section 1747.50 [wilful failure to correct credit card billing error, treble damages].
7. Civil Code Section 1785.31 [violation of Consumer Credit Reporting Law, not less than \$100 nor more than \$5,000].
8. Civil Code Section 1787.3 [Consumer Credit Denial, \$10,000 in individual action, lesser of \$500,000 or 1% of net worth in class action].
9. Civil Code Section 1812.19 [wilful violations of retail installment sale finance charge regulations, treble damages].
10. Civil Code Section 1812.31 [violation of equal credit for women law, \$10,000 in individual action, lesser of \$100,000 or 1% of defendant's net worth in a class action].

11. Civil Code Section 1812.62 [violation of Dance Studio's Services Act, treble damages].
12. Civil Code Section 1812.94 [violation of Health Studio's Services Act, treble damages].
13. Civil Code Section 1916.3 (West 1954) [violation of usury law, treble damages].
14. Probate Code Section 612 [double damages for embezzlement or fraudulent sale of decedent's property].
15. Business and Professions Code Section 16750 [violation of Unfair Weight Act, treble damages].
16. Business and Professions Code Section 17082 [violation of unfair trade practices, treble damages].
17. Health and Safety Code Section 25359 [failing, without sufficient cause, to report an unauthorized release of a hazardous substance, treble damages].